

### Remarks

Claims 1-33 have been canceled without prejudice or disclaimer. New claims 34-66 have been added in order to claim additional embodiments of the subject matter of the provisionally-elected group. New claims 34-66 find support throughout the specification and claims as originally filed. Thus, no new matter has been added by way of amendment, and entry of the above amendments is respectfully solicited.

Claims 33-66 are pending.

### Restriction Requirement

Pursuant to Paper No. 3, mailed August 21, 2002, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-X. The Examiner contends that said groups constitute separate inventions, which are distinct, each from the other. The Examiner has further required an election of a single nucleic acid sequence within Group I. See Paper No. 3, page 4.

In response, Applicants provisionally elect, *with traverse*, the subject matter of Group I, represented by originally filed claims 1-8 and new claims 33-66, drawn to polynucleotides, vectors, host organisms, and methods of use of such polynucleotides. Applicants further provisionally elect the nucleic acid sequence of ORF ID 4 of Contig ID 65, represented by nucleotides 2889-1915 of SEQ ID NO:65. See Specification at Table 1, line 4.

Applicants point out that claims 1-33 have been canceled, and that new claims 33-66 are directed to subject matter falling within the ambit of Group I, as cast by the Examiner.

With respect to the Examiner's division of the invention into ten groups and the reasons stated therefor, Applicants respectfully traverse. Even assuming, *arguendo*, that such groups represented distinct and independent inventions, Applicants submit that to search and examine claims to a particular nucleic acid, polypeptides encoded thereby, and antibodies recognizing such polypeptide together would not be a serious burden on the Examiner. Applicants point out that even where patentably distinct inventions appear in a single application, restriction remains improper unless the examiner can show that the search and examination of these groups would entail a "serious burden". See M.P.E.P. § 803. In the present situation, no such showing has been made. Although the Examiner has argued that Groups I through X are separately classified, Applicants nonetheless submit that a search of the claims of Group I would also provide useful information for the claims of Groups II-X. For example, in many if not most publications disclosing one or more polynucleotides, the authors also routinely include polypeptides encoded thereby, antibodies directed against said polypeptides, and methods for making and using the same. Therefore, since the searches for polynucleotides, polypeptides, antibodies, and methods of making and using the same commonly overlap, the search and examination of Groups I-X would not entail a serious burden.

Accordingly, in view of M.P.E.P. § 803, the claims of all Groups I-X should be searched and examined in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn, and that the instant claims be examined in one application.

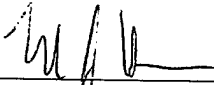
Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

**Conclusion**

Entry of the above amendment is respectfully solicited. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application. If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an additional extension of time under 37 C.F.R. § 1.136, such an extension is requested and the fee should also be charged to our Deposit Account.

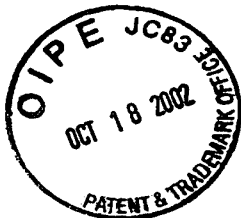
Respectfully submitted,

Dated: October 18, 2002

  
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Enclosures



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re application of: Dillon et al.

Atty. Docket: PB324D1

Application Serial No.: 09/956,004

Art Unit: 1631

Filed: September 20, 2001

Examiner: Ly, C.

For: Nucleotide Sequence of *Escherichia coli* Pathogenicity Islands

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**In the Claims:**

Claims 1-33 have been canceled without prejudice or disclaimer. Claims 34-66 have been added.